

**REMARKS**

Claims 1-30 are pending in the present application.

Claims 1-30 have been rejected.

Claims 19 and 25 were amended to include the limitations of previous claims 20 and 26, respectively, which have been cancelled. Claims 21, 22, 27 and 28 were amended to correct their dependency.

Claims 1-19, 21-25, and 27-30 remain in the present application.

Reconsideration of the claims is respectfully requested.

**REJECTION UNDER 35 U.S.C. § 103**

Claims 1-3, 7-9 and 13-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over what the Examiner characterizes as “Applicant’s Admitted Prior Art” (hereinafter “APA”) in view of U.S. Patent No. 6,418,322 to *Kim, et al.*, (hereinafter “Kim”). The Applicant respectfully traverses the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Claim 1 requires a transmit power controller capable of adjusting a power level of null frames transmitted by said base station during said call set-up procedure. This is not disclosed or suggested by Kim. Kim does disclose:

A method of forward power control in a cellular mobile telecommunication system having a base station and a mobile station, a base station receives an information about the quality of a forward link from a mobile station and controls the transmission power in the forward link. If information about the quality of the forward link is not obtained within a predetermined period due to deterioration in the forward link, the base station changes its parameters of the forward power control. As a result, the digital gain of transmission power of the forward link is increased to improve the deteriorated quality of the forward link and to carry out the forward power control. Simultaneously, the base station decreases the digital gain of transmission power more rapidly to saving a power consumption and to reduce interference to other radio channels. *Abstract*

It is clear that while Kim does discuss power control on a forward channel, nothing in Kim discusses any capability to do so during the call set-up procedure, as claimed. Kim teaches a method for improving forward power control in cellular mobile telecommunication system. According to the disclosed methods, a call is first established between a mobile station and a base station. During the call, the forward power is controlled by decreasing the digital gain of the base station and increasing

the digital gain according to information about the quality of the forward link received from the mobile station. Kim discloses that the mobile station periodically (or when the number of non-proper frames received from the base station falls under a predetermined threshold value) transmits a power measurement report message (PMRM) as a forward power control signal.

It is clear that Kim's system requires that the call already be established before any power control takes place. This is contrary to the claimed invention, where the power level of the null frames can be or is adjusted during the call set-up procedure.

As this feature of claims 1, 7, 13, 19, and 25 is not taught or suggested by any art of record, alone or in combination, the obviousness rejection of all claims is traversed.

Claims 4, 5, 10, 11, 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of U.S. Patent Application Publication No. 2002/0090947 to *Brooks, et al.*, (hereinafter "Brooks"). The Applicant respectfully traverses the rejection.

Applicant notes that the Examiner did not include any reference to APA in this statement of rejection, and the rejection is only over Kim and Brooks. The limitations of the respective parent claims are not shown to be present in Kim or Brooks, and so there is not a *prima facie* obviousness rejection.

Brooks similarly does not teach or suggest the limitation discussed above with relation to adjusting power levels during the call set-up procedure. As none of the cited references, alone or in combination, teaches or suggests this feature, the rejection of these claims is traversed.

Claims 6, 12, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over APA in view of Kim and Brooks, and further in view of U.S. Patent Application No. 2002/0068586 to *Chun, et al.*, (hereinafter “Chun”). The Applicant respectfully traverses the rejection.

Chun similarly does not teach or suggest the limitation discussed above with relation to adjusting power levels during the call set-up procedure. As none of the cited references, alone or in combination, teaches or suggests this feature, the rejection of these claims is traversed.

Claims 19-21 and 25-27 were rejected as obvious over APA in view of U.S. Patent Application Publication No. 2004/0029604 to *Raaf*, (hereinafter “Raaf”). Claims 22, 23, 28 and 29 were rejected as obvious over APA in view of Raaf, and further in view of Brooks. Claims 24 and 30 were rejected as obvious over APA in views of Raaf and Brooks, and further in view of Chun. The Applicant respectfully traverses these rejections.

Claims 19 and 25 were amended to include the limitations of previous claims 20 and 26, respectively, which have been cancelled.

Claims 19 and 25, as amended, each require that the power level of preamble frames transmitted by the mobile station is increased in response to the detection of at least one missing null frame from the base station. None of the cited references, alone or in combination, teaches or suggests this feature.

Raaf does teach in paragraph 0037 that power can be increased when there is “no reception of an acknowledgement message”, it does not teach or suggest that this can or should be done in response to the detection of at least one missing null frame from the base station. Nothing in Raaf teaches or suggests that a null frame can or should be used as the described “acknowledgement message”.

Further, Raaf teaches away from increasing power when at least one “acknowledgement message” is received:

If the open-loop power control estimates a lower initial power for the preamble, this indicates that a preamble sent with this initial power should be receivable with high probability by a base station; however, an unsuccessful transmission (no reception of an acknowledgement message) of a preamble could also be caused by a collision on the transmission channel, an abrupt short-term interference, a short-term high attenuation or an error in the transmission of the acknowledgement message. This is why it is appropriate to retransmit the preamble with the same low power. *Paragraph 0037.*

As these features of claims 19 and 25 (as amended) are not taught or suggested by any art of record, alone or in combination, the obviousness rejection of claims 19-30 is traversed.

All rejections are traversed.

**SUMMARY**

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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